



## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-091]

#### **Certain Steel Wheels 12 to 16.5 inches in Diameter from the People's Republic of China:**

#### **Notice of Court Decision Not in Harmony with the Final Determination of Countervailing Duty Investigation and Notice of Amended Final Countervailing Duty Determination**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On November 18, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Trans Texas Tire, LLC and Zhejiang Jingu Company Limited v. United States*, Consol. Court No. 19-00189, Slip Op. 21-157 (CIT November 18, 2021) sustaining the Department of Commerce (Commerce)'s remand redetermination pertaining to the countervailing duty (CVD) investigation of certain steel wheels 12 to 16.5 inches in diameter (certain steel wheels) from the People's Republic of China (China). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation, and that Commerce is amending the final determination and the resulting CVD order with respect to the CVD margin assigned to entries of certain steel trailer wheels 12 to 16.5 inches in diameter coated in chrome through a Physical Vapor Deposition (PVD) process produced and/or exported from the China by Zhejiang Jingu Company Limited (Jingu), or produced by Xingmin Intelligent Transportation Systems (Group) (Xingmin Intelligent) and imported by Trans Texas Tire LLC (Trans Texas).

**DATES:** Applicable November 29, 2021.

**FOR FURTHER INFORMATION CONTACT:** Brendan Quinn, AD/CVD Operations,

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## **SUPPLEMENTARY INFORMATION:**

### Background

On July 9, 2019, Commerce published its final determination in the CVD investigation of certain steel wheels China.<sup>1</sup> Commerce subsequently published the CVD order on certain steel wheels from China.<sup>2</sup>

As initiated, the scope of the underlying investigation excluded “certain on the road steel wheels that are coated entirely with chrome.”<sup>3</sup> This scope exclusion remained unchanged in the CVD preliminary determination published on February 25, 2019.<sup>4</sup> Subsequent to the *Preliminary Determination*, though prior to the preliminary determination in the less-than-fair-value (LTFV) investigation, Dexstar Wheel Division of Americana Development, Inc. (the petitioner) filed additional scope comments regarding the exclusion of chrome wheels, specifically requesting that Commerce confirm that the chrome wheel exclusion did not include PVD chrome wheels.<sup>5</sup> However, due to the proximity of the date on which the petitioner’s comments (and relevant rebuttal comments) were received relative to the statutory deadline for the issuance of the LTFV preliminary determination, Commerce deferred consideration of the petitioner’s comments to the final determinations of the LTFV and CVD investigations.<sup>6</sup>

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<sup>1</sup> See *Certain Steel Trailer Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32723 (July 9, 2019) (*Final Determination*).

<sup>2</sup> See *Certain Steel Trailer Wheels 12 to 16.5 Inches from the People’s Republic of China: Antidumping Duty and Countervailing Duty Orders*, 84 FR 45952 (September 3, 2019) (*Order*).

<sup>3</sup> See *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 45100 (September 5, 2018) (*Initiation Notice*).

<sup>4</sup> See *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 5989 (February 25, 2019) (*Preliminary Determination*) at Appendix 1.

<sup>5</sup> See Petitioner’s Letter, “Certain Steel Wheels (12 to 16.5 Inches in Diameter) from China: Petitioner’s Clarification of the Exclusion of Chrome Wheels,” dated March 28, 2019.

<sup>6</sup> See Memorandum, “Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Preliminary Scope Decision Memorandum,” dated April 15, 2019.

Accordingly, the scope language in Commerce's *Initiation Notice and Preliminary Determination* did not explicitly address whether the scope exclusion for steel wheels coated entirely with chrome covered PVD chrome wheels.

Based on the petitioner's scope comments, Commerce solicited additional information with respect to PVD chrome wheels, and parties provided further information and argumentation in response. Commerce then evaluated the record with respect to this issue for the first time in its Final Scope Memo, finding with respect to PVD chrome wheels that:

based on evidence and information in the Petition, we find that the petitioner intended the exclusion to cover electroplated chrome wheels and was not intended to cover other types of chrome-adhering processes; nor were other types of chrome adhering processes, such as PVD, considered anywhere on the record prior to the respondent party's clarification request, in which case the petitioner promptly and consistently maintained its intent with respect to the chrome exclusion language. Thus, we do not find that limiting the exclusion to electroplating expands the scope, as the exclusion was never meant to cover PVD chrome wheels and, therefore, carving out an exception for PVD wheels from the exclusion is a clarification and not an impermissible expansion of the scope.<sup>7</sup>

Accordingly, the scope of the *Final Determination* and resulting CVD order provided the following with respect to chrome-coated wheels:

Excluded from this scope are the following:...(3) certain on-the-road steel wheels that are coated entirely in chrome. This exclusion is limited to chrome wheels coated entirely in chrome and produced through a chromium electroplating process, and does not extend to wheels that have been finished with other processes, including, but not limited to, Physical Vapor Deposition (PVD){.}

Further, in the Final Scope Memo, Commerce noted that "the clarification that the exclusion in the scope for chrome wheels does not cover PVD chrome wheels is a clarification, based on the petitioner's original intent in the Petition, not an expansion of the scope. Thus, PVD chrome wheels are subject to duties from the start of suspension of liquidation, which was the preliminary determinations," and declined to revise the scope language to specify that the

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<sup>7</sup> See Memorandum, "Certain Steel Wheels from the People's Republic of China: Final Scope Decision Memorandum for the Final Antidumping Duty and Countervailing Duty Determinations," dated July 1, 2019 (Final Scope Memo) at 15.

clarification of the exclusion for chrome wheels applies only to entries following the *Final Determination*.<sup>8</sup>

Trans Texas and Jingu challenged Commerce's scope determination before the CIT, arguing that Commerce unlawfully expanded the scope of the CVD investigation (and resulting order) to include PVD chrome wheels. Trans Texas and Jingu further argued that, even if the inclusion of PVD chrome wheels was lawful, Commerce erred by retroactively assessing countervailing duties on PVD chrome wheel imports back to the date of its *Preliminary Determination*.

In its *Remand Order*, the Court determined that, while Commerce adequately explained its decision to include in the final scope of the investigation steel trailer wheels coated in chrome through a PVD process, countervailing duties on PVD chrome wheels retroactively imposed back to the date of Commerce's preliminary determination were not imposed in accordance with law.<sup>9</sup> In particular, the Court held that retroactive assessment of duties back to the date of Commerce's preliminary determination was impermissible because Commerce did not provide adequate notice of the inclusion of PVD chrome wheels prior to the Final Scope Memo<sup>10</sup> and, thus, remanded the *Final Determination* for Commerce to reformulate its instructions consistent with the *Remand Order*.<sup>11</sup>

On June 14, 2021, Commerce issued its Final Results of Redetermination, noting our intent to issue an amended final determination to clarify the date of imposition of countervailing duties to be the date of publication of the *Final Determination* and to issue instructions to U.S. Customs and Border Protection (CBP) with respect to Trans Texas and Jingu providing that entries of PVD chrome wheels entered, or withdrawn from warehouse, for consumption on or after February 25, 2019, up to July 8, 2019, are excluded from the scope of the investigation,

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<sup>8</sup> *Id.* at 16.

<sup>9</sup> See *Trans Texas Tire, LLC and Zhejiang Jingu Company Limited v. United States*, Consol. Court No. 19-00189, Slip Op. 21-63 (CIT May 18, 2021) (*Remand Order*) at 16 and 20-21.

<sup>10</sup> See Final Scope Memo.

<sup>11</sup> See *Remand Order* at 21-22 and 26.

consistent with the Court's *Remand Order*.<sup>12</sup> These instructions give effect to the Court's holding that "reasonably informed importers were not provided clear or meaningful notice of the inclusion of PVD chrome wheels until the publication of the Final Scope Memo."<sup>13</sup>

On November 18, 2021, the CIT sustained Commerce's final redetermination, and entered final judgment.<sup>14</sup>

#### Timken Notice

In its decision in *Timken*,<sup>15</sup> as clarified by *Diamond Sawblades*,<sup>16</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's November 18, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

#### Amended Final Determination and Liquidation of Suspended Entries

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to the CVD margin assigned to entries of certain steel trailer wheels 12 to 16.5 inches in diameter coated in chrome through a PVD process produced and/or exported from China by Jingu, or produced by Xingmin Intelligent and imported by Trans Texas, which were entered or withdrawn from warehouse, for consumption on or after February 25, 2019 (the date of publication of the *Preliminary Determination* in the *Federal Register*), up to and including June 24, 2019 (the day on which CVD provisional measures expired), and which

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<sup>12</sup> See Final Results of Redetermination Pursuant to Court Remand, *Trans Texas Tire, LLC and Zhejiang Jingu Company Limited v. United States*, Consol. Court No. 19-00189; Slip Op. 21-63, dated June 14, 2021 (Final Results of Redetermination).

<sup>13</sup> See *Remand Order* at 21.

<sup>14</sup> See *Trans Texas Tire, LLC and Zhejiang Jingu Company Limited v. United States*, Consol. Court No. 19-00189, Slip Op. 21-157 (CIT November 18, 2021).

<sup>15</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>16</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

remained unliquidated as of the date of the relevant preliminary injunction (September 4, 2020, in the case of merchandise produced and/or exported by Jingu; and November 27, 2019, in the case of merchandise produced by Xingmin Intelligent and imported by Trans Texas).

Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. Specifically, we will direct CBP to suspend or continue to suspend liquidation of such entries at a zero percent cash deposit rate during the pendency of the appeals process until specific liquidation instructions are issued, and we will notify CBP that it is authorized to grant a refund of cash deposits for such entries, if requested by the importer prior to liquidation pursuant to 19 U.S.C. 1520(a)(4). In the event the Court's ruling is not appealed or, if appealed, upheld by the Court of Appeals for the Federal Circuit, Commerce will instruct CBP that entries of certain steel trailer wheels 12 to 16.5 inches in diameter coated in chrome through a PVD process, which: (a) were the subject of the *Final Determination*; (b) were produced and/or exported from China by Jingu, or were produced by Xingmin Intelligent and imported by Trans Texas; (c) were entered, or withdrawn from warehouse, for consumption on or after February 25, 2019 up to and including June 24, 2019; and (d) remain unliquidated as of September 4, 2020 (for wheels produced and/or exported from China by Jingu) or remain unliquidated as of November 27, 2019 (for wheels produced by Xingmin Intelligent and imported by Trans Texas); are outside of the scope of the CVD order on certain steel trailer wheels from China.

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: November 24, 2021.

Ryan Majerus,  
Deputy Assistant Secretary  
for Policy and Negotiations,  
Performing the Non-Exclusive Functions and Duties of The  
Assistant Secretary for Enforcement and Compliance.

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